

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
SEP 20 2019
Clerk of the Appellate Courts
Rec'd By Kim

STATE OF TENNESSEE,)
)
Movant,)
)
v.)
)
Donald Ray Middlebrooks,)
)
Defendant.)

Case No. M2001-01865-SC-R11-PD
Davidson County
87-F-1682

MOTION TO SET EXECUTION DATE

As Tenn. Sup. Ct. R. 12.4(A) requires the State to do when a death-row prisoner has completed the standard three-tier appeals process, the State of Tennessee moves this Court to set an execution date for Donald Ray Middlebrooks. In support of this motion, the State relies on the following:

1. Middlebrooks was convicted for the 1987 torture-murder of Kerrick Majors and sentenced to death. This Court initially affirmed the conviction but reversed the death sentence and remanded for resentencing. *State v. Middlebrooks*, 840 S.W.2d 317 (Tenn. 1992). The United States Supreme Court initially granted certiorari but ultimately dismissed, finding that certiorari had been improvidently granted.

Tennessee v. Middlebrooks, 507 U.S. 1028 (1993); *Tennessee v. Middlebrooks*, 510 U.S. 124 (1993). Middlebrooks was again given a death sentence on remand, which this Court affirmed on direct appeal from resentencing. *State v. Middlebrooks*, 995 S.W.2d 550 (Tenn. 1999).

2. Middlebrooks filed a petition for post-conviction relief in the trial court, which was denied following an evidentiary hearing. The Court of Criminal Appeals affirmed the judgment, and this Court denied discretionary review. *Middlebrooks v. State*, No. M2001-01865-CCA-R3-PD, 2003 WL 61244 (Tenn. Crim. App. Jan. 9, 2003), *perm. app. denied* (Tenn. July 7, 2003).

3. Middlebrooks filed a petition for writ of habeas corpus in the United States District Court for the Middle District of Tennessee in 2003. The district court denied relief and dismissed the petition. *Middlebrooks v. Bell*, No. 3:03-0814 (M.D. Tenn. May 26, 2005). The United States Court of Appeals for the Sixth Circuit affirmed the denial, but on certiorari review, the Supreme Court vacated the judgment and remanded for further consideration in light of *Martinez v. Ryan*, 566 U.S. 1 (2012). The district court denied relief on remand, and that action was again affirmed by the Sixth Circuit. *Middlebrooks v. Carpenter*, 843 F.3d 1127 (6th Cir. 2016) (reh'g denied, Mar. 14, 2017). The United States Supreme Court denied a petition for writ of certiorari on December 4, 2017, and denied rehearing on February 20, 2018.

Middlebrooks v. Mays, 138 S.Ct. 503 (2017) (reh'g denied, Feb. 20, 2018).

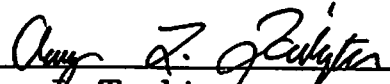
4. Middlebrooks has completed the standard three-tier appeals process, making the setting of an execution date appropriate. *See* Rule 12.4(A). There are no current judicial or executive orders staying defendant's execution or granting a reprieve.

This Court should set an execution date in accordance with the judgment of the Criminal Court of Davidson County, Tennessee.

Respectfully submitted,

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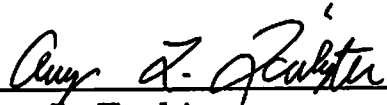
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion was forwarded by United States mail, first-class postage prepaid, on the ~~20th~~ day of September, 2019, to the following:

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The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by e-mail at Amy.Tarkington@ag.tn.gov.



Amy L. Tarkington
Associate Solicitor General